IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 927 OF 2007

Imtiyaz Chand Khan Pathan ... Petitioner
(Orig. Applicant)

Vs.

The State of Maharashtra & Anr. Respondents

Mr. R.A.Shaikh, Advocate, for the petitioner.
Mr. Y.S.Shinde, APP, for State.

CORAM: J.H.BHATIA,J.
DATE : 28th June, 2007.

P.C.

1. Heard Mr. Shaikh, learned Advocate for the petitioner and Mr. Shinde, APP, for the State.

2. The petitioner is the accused No.6 in C.C. No.4382/PW/2005 arising out of crime No.16/2005 registered by the MIDC Police Station. The offence was registered under Section 498A, 406 read with Section 34 of I.P.C. on a report lodged by the former wife of the

brother of the present petitioner. Besides the former husband, the brothers, sisters and parents are also implicated as accused in the matter. The present petitioner made an application before the learned Metropolitan Magistrate,22nd Court, Andheri, seeking leave to go abroad for a period of two years. The learned Magistrate had permitted him to go abroad subject to the condition that he shall attend the Court on 23.11.2007 being the next date. According to the petitioner, the condition of attending the Court on 23.11.2007 will cause great hardship and inconvenience, particularly because, he is going abroad to join some employment and his employer may not allow him to come back within 2 years and his Visa is for two years. He preferred Revision Application, but it came to be dismissed as not maintainable. Therefore, he has filed this Petition.

3. The learned Counsel for the petitioner pointed out that in the same matter, his brother Firoz, was granted permanent exemption mainly on the ground that the matters are pending for more than 7 years and in view of huge pendency, the present matter is not likely to come up within a short time.

4. Taking into consideration these facts and circumstances, I find that the condition imposed by the

trial Court to attend the Court on 23.11.2007 will create hardship and inconvenience to the petitioner who is going to join some job in the foreign country. The purpose will be served if he is available at the time of recording of statement under Sec.313 Cr.P.C. and for pronouncement of judgment. The petitioner being the member of the family, the question of identification will not arise during the trial. Therefore, in my considered opinion, he may be allowed to go abroad and he may be granted exemption from appearance till such recording of statement under Sec.313 of Cr.P.C. subject to his giving undertaking to that effect and also that on the ground of his absence no adjournment will be sought by the accused person.

5. Therefore, the Petition is allowed and the petitioner is allowed to travel abroad and is granted exemption from appearance before the trial Court during the trial subject to his giving undertaking that he shall remain present as and when the matter is fixed for recording of his statement under Sec.313 Cr.P.C. or for pronouncement of judgment and that no adjournment shall be sought by the accused persons on the ground of his absence.

The Petition stands disposed of with the aforesaid directions.

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(J.H.BHATIA,J.)